

Message

From: Jackson, Laurianne [Jackson.Laurianne@epa.gov]
Sent: 1/5/2016 9:04:37 PM
To: Abendschan, Sharon [Abendschan.Sharon@epa.gov]
Subject: RE: Nelson Tunnel Site Definition

This Thursday, I'll just have to pop out (discretely, don't want to have to immediately report back to the state at the NT meeting) for 30 minutes to take the call. I had not transferred my meetings from outlook on my new 2016 hard copy calendar...my mistake.

Laurianne M. Jackson
Enforcement Attorney
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Phone: 303/312-6950
Fax: 303/312-6953

From: Abendschan, Sharon
Sent: Tuesday, January 05, 2016 2:02 PM
To: Jackson, Laurianne <Jackson.Laurianne@epa.gov>
Subject: RE: Nelson Tunnel Site Definition

Is your meeting w/ Joe this coming Thursday or next Thursday?

From: Jackson, Laurianne
Sent: Tuesday, January 05, 2016 1:54 PM
To: Abendschan, Sharon <Abendschan.Sharon@epa.gov>
Subject: RE: Nelson Tunnel Site Definition

I think that is correct but you should confirm/remind the RPMs and would you mind requesting agendas? The invite says you have the Bighorn room reserved.

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From: Abendschan, Sharon
Sent: Tuesday, January 05, 2016 1:45 PM
To: Jackson, Laurianne <Jackson.Laurianne@epa.gov>
Subject: RE: Nelson Tunnel Site Definition

Laurianne,

I have down that we have our Nelson team meeting on Thursday, here at EPA. Is that correct?

Sharon

From: Jackson, Laurianne
Sent: Tuesday, January 05, 2016 1:35 PM
To: Madigan, Andrea <Madigan.Andrea@epa.gov>
Cc: Piggott, Amelia <Piggott.Amelia@epa.gov>; Abendschan, Sharon <Abendschan.Sharon@epa.gov>; Land, Kelcey <Land.Kelcey@epa.gov>
Subject: RE: Nelson Tunnel Site Definition

Thank you, Andrea. Because we all appear to be on the same page, I do not think the meeting I scheduled for tomorrow is necessary. I will communicate EPA's position to Jerry today. I will keep you all posted on our discussions with CoCa (we have a telephone conference scheduled for Thursday at 3:00pm).

Thank you all for reading my analysis and please let me know if you would like to discuss anything further.

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From: Madigan, Andrea
Sent: Tuesday, January 05, 2016 12:17 PM
To: Jackson, Laurianne <Jackson.Laurianne@epa.gov>
Cc: Piggott, Amelia <Piggott.Amelia@epa.gov>; Abendschan, Sharon <Abendschan.Sharon@epa.gov>
Subject: RE: Nelson Tunnel Site Definition

Attorney Client / Ex. 5

Andrea Madigan
CERCLA Supervisory Attorney
Legal Enforcement Program
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202
(303) 312-6904

From: Jackson, Laurianne
Sent: Monday, January 04, 2016 2:25 PM
To: Madigan, Andrea <Madigan.Andrea@epa.gov>
Cc: Piggott, Amelia <Piggott.Amelia@epa.gov>; Abendschan, Sharon <Abendschan.Sharon@epa.gov>
Subject: FW: Nelson Tunnel Site Definition

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Hi all:

I hope you had a great holiday.

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Attorney Client / Ex. 5

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From: Ellington, Jerry L (ENRD) [<mailto:Jerry.L.Ellington@usdoj.gov>]
Sent: Tuesday, December 29, 2015 4:57 PM
To: Jackson, Laurianne <Jackson.Laurianne@epa.gov>
Cc: Hoffman, Heidi K (ENRD) <Heidi.Hoffman@usdoj.gov>; Freeman, James (ENRD) <James.Freeman2@usdoj.gov>
Subject: FW: Nelson Tunnel Site Definition

Laurianne:

I hope you had a wonderful time off with the family.

Here's my initial reaction to Joe's email and attachments.

Attorney Client / Ex. 5

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Attorney Client / Ex. 5

Attorney Client / Ex. 5

Let me know what the Region wants to do.

Jerry

From: Joe Middleton [mailto:middleton@twhlaw.com]

Sent: Tuesday, December 22, 2015 3:14 PM

To: Jackson, Laurianne (Jackson.Laurianne@epa.gov) <Jackson.Laurianne@epa.gov>; Ellington, Jerry L (ENRD) <Jellington@ENRD.USDOJ.GOV>

Cc: Elizabeth Temkin <temkin@twhlaw.com>

Subject: Nelson Tunnel Site Definition

Confidential Settlement Communication Subject to FRE 408

Laurianne and Jerry:

We are getting back to you regarding our discussions of the definition of “Site” for the Creede consent decree. The last time we talked, we had agreed to put together some examples of other consent decrees which use language similar to the language we have advocated at Creede. That language defines the Site to include areas where hazardous substances from the Nelson Tunnel and Commodore Waste Rock Pile “have come to be located.” A list of several examples which use similar language is attached, along with our proposed definition of the Site.

I am also enclosing the final NPL listing for the Nelson Tunnel, which very clearly explains that the site does not just include the source of the release. *See* 73 F.R. 51369 (September 3, 2008) (“the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.”). Similarly, the final FR notice amending the NPL in March of 1990 (also attached) recognizes that the boundaries of a site may change based on information developed during the RI/FS process in order to capture all the areas where hazardous substances have come to be located. *See* 55 F.R. 9690 (March 14, 1990).

I have also enclosed a case from the 9th Circuit recognizing EPA's broad authority to enlarge the boundaries of CERCLA sites in response to additional information, and discussing other relevant cases and EPA's own statements interpreting its authority.

Finally, I am enclosing figures of both the Nelson Tunnel and Gilt Edge sites. The figure of the Gilt Edge site helps illustrate just how similar that situation is to Nelson Tunnel. Both sites are headwater sites that impact downstream water quality beyond their "boundaries." The covenants at both sites need to cover the downstream impacts to be complete.

Please let us know when you have had a chance to review these materials, and we will schedule a call, if needed, to discuss the issue.

Thanks,
Joe Middleton

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